

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

**November 22, 1996**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 94-391-R
	:	
WESTERN FUELS-UTAH, INC.	:	
	:	
	:	

BEFORE: Jordan, Chairman; Marks and Riley, Commissioners<sup>1</sup>

DECISION

BY THE COMMISSION:

This contest proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act” or “Act”), raises the question of whether Western Fuels-Utah, Inc. (“Western Fuels”) violated 30 C.F.R. § 75.516-2(c) because additional insulation had not been provided for a communication cable at the point where it crossed over power cables.<sup>2</sup> Administrative Law Judge Richard Manning concluded that Western Fuels violated the

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<sup>1</sup> Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 823(c), this panel of three Commissioners has been designated to exercise the powers of the Commission.

<sup>2</sup> Section 75.516-2, entitled, “Communication wires and cables; installation; insulation; support,” provides:

- (a) All communication wires shall be supported on insulated hangars or insulated J-hooks.
- (b) All communication cables shall be insulated . . . , and shall either be supported on insulated or uninsulated hangers or J-hooks, . . . or buried, or otherwise protected against mechanical

regulation. 17 FMSHRC 756 (May 1995) (ALJ). For the reasons that follow, we affirm.

I.

Factual and Procedural Background

Western Fuels operates the Deserado Mine, an underground coal mine in Rio Blanco County, Colorado. 17 FMSHRC at 756. On April 21, 1994, during an inspection of the mine, Phillip Gibson, an inspector with the Department of Labor’s Mine Safety and Health Administration (“MSHA”), observed that a communication cable crossed over several power cables in the belt conveyor entry of the 9th east longwall section.<sup>3</sup> *Id.* at 756-58.

The communication cable, which was suspended from the ceiling by J hooks and used 24 volts of DC electricity, was connected to a phone approximately 15 feet from where the two circuits crossed. *Id.* at 757; Tr. 17-19, 49. The communication cable contained four shielded conductors. 17 FMSHRC at 757.

The power cables were medium voltage power conductors, supplying approximately 995 volts of AC electricity to the longwall shearing machine and associated equipment. *Id.*; Tr. 18. They hung from cable carriers along a monorail, consisting of a long I-shaped bar, suspended from the mine roof. 17 FMSHRC at 758; W. Ex. 4. The power cables contained three power conductors, two ground conductors, and a conductor for the ground fault monitor. 17 FMSHRC at 758.

The communication cable and power cables were not damaged or worn, and were well insulated and protected against damage by outer jackets. *Id.* Inspector Gibson observed, however, that additional insulation had not been provided where the communication cable passed

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damage . . . .

(c) All communication wires and cables installed in track entries shall, except when a communication cable is buried in accordance with paragraph (b) of this section, be installed on the side of the entry opposite to trolley wires and trolley feeder wires. Additional insulation shall be provided for communication circuits at points where they pass over or under any power conductor.

(d) For purposes of this section, communication cable means two or more insulated conductors covered by an additional abrasion-resistant covering.

<sup>3</sup> The parties disagreed as to whether the communication cable and the power cables were in contact where they crossed. 17 FMSHRC at 758.

over the power cables. *Id.* at 757; Tr. 17-19. Accordingly, he issued to Western Fuels a citation alleging a violation of section 75.516-2(c). 17 FMSHRC at 756; G. Ex. 1.

Western Fuels contested the citation and the matter proceeded to hearing before Judge Manning. Before the judge, Western Fuels did not dispute that the communication cable passed over the power cables, or that additional insulation had not been provided at that location. 17 FMSHRC at 757. Rather, it argued that the reference to track entries in the first sentence of section 75.516-2(c) limits the requirement for additional insulation in the second sentence to only those communication cables installed in track entries. *Id.* at 759. Western Fuels asserted that it did not violate the standard because the cited communication cable was not in a track entry. *Id.* The Secretary interpreted the standard to require additional insulation at any point where communication cables cross power conductors, regardless of their location. *Id.*

The judge determined that Western Fuels violated section 75.516-2(c). *Id.* at 763. He reasoned that the language of the standard was clear on its face and that the second sentence's requirement for additional insulation applied to the condition cited by Inspector Gibson. *Id.* at 760. The judge rejected Western Fuels' argument that the provisions of section 75.516-2(c) were only applicable to track entries, noting that the second sentence expressly required additional insulation where communication circuits pass over or under "any power conductor." *Id.* He explained that the placement of that sentence after the sentence addressing track entries did not alter its meaning. *Id.* Because he found the standard clear, the judge determined that he did not need to reach whether the Secretary's interpretation was entitled to deference. *Id.* Accordingly, the judge affirmed the citation. *Id.* at 763.

Western Fuels filed a petition for discretionary review, challenging the judge's determination, which the Commission granted.

## II.

### Disposition

Western Fuels argues that the judge erred in rejecting its argument that the two sentences of section 75.516-2(c) must be read together to require additional insulation only for communication cables that cross power cables in track entries. W. Br. at 9-17. It also asserts that the judge acknowledged the Secretary's interpretation of the standard would divert resources from more serious hazards, and that the judge erred in placing responsibility for correcting the regulation on the Secretary. *Id.* at 17-20. Petitioner explains that the judge has "discretion in correcting errors by . . . [an] agency," and that the "judge should not slavishly accept" the agency's interpretation. *Id.* at 17. The Secretary responds that the judge's interpretation is supported by the clear language of the standard. S. Br. at 8-9. The Secretary also submits that his interpretation of the standard is reasonable and entitled to deference. *Id.* at 6-8.

The Commission has recognized that where the language of a regulatory provision is clear,

the terms of that provision must be enforced as they are written unless the regulator clearly intended the words to have a different meaning. *Consolidation Coal Co.*, 18 FMSHRC 1541, 1545 (September 1996) (citations omitted). It is only when the plain meaning is doubtful or ambiguous that the issue of deference to the Secretary's interpretation arises. See *Pfizer Inc., v. Heckler*, 735 F.2d 1502, 1509 (D.C. Cir. 1984) (deference is considered “only when the plain meaning of the rule itself is doubtful or ambiguous”) (emphasis in original). We agree with the judge that the language of section 75.516-2(c) is clear and, accordingly, we do not reach the issue of deference.

The first sentence of section 75.516-2(c) requires that “[a]ll communication wires and cables installed in track entries . . . be installed on the side of the entry opposite to trolley wires and trolley feeder wires.” 30 C.F.R. § 75.516-2(c). The second sentence provides that “[a]dditional insulation shall be provided for communication circuits at points where they pass over or under *any* power conductor.” 30 C.F.R. § 75.516-2(c) (emphasis added). Thus, the second sentence, considered separately, clearly requires additional insulation at the location where Western Fuels' communication cable crossed over its power cables.

Contrary to Western Fuels' assertions, the requirement for additional insulation is not altered when the second sentence of the subsection is read within its context. The first and second sentences of section 75.516-2(c) address separate and distinct requirements. The first sentence of the subsection relates to the required location of communication wires and cables in track entries while the second sentence sets forth a requirement for additional insulation for communication circuits at points where they pass over or under any power conductor. The second sentence makes no cross-reference to the first sentence. Moreover, the language of the second sentence is expressly broad, requiring additional insulation where a communication cable crosses “*any* power conductor.” 30 C.F.R. § 75.516-2(c) (emphasis added).

Furthermore, reading the second sentence to require additional insulation for communication cables that cross any power conductor, regardless of whether the cables are located in track entries, is consistent with an interpretation of section 75.516-2 as a whole. See *Morton Int'l, Inc.*, 18 FMSHRC 533, 536 (April 1996) (citations omitted) (regulations should be read as a whole, giving comprehensive, harmonious meaning to all provisions). The title of the standard, “Communication wires and cables; installation; insulation; support,” is worded broadly, suggesting application of the standard's requirements to all communication cables. None of the sentences in the standard, except the first sentence of subsection (c), speak to track entries or trolley wires and, as noted, application of the additional insulation requirement in the second sentence of subsection (c) is expressly broad.

Finally, we reject Western Fuels' argument that the judge erred in accepting the Secretary's interpretation after acknowledging that such an interpretation would divert resources from more serious hazards. W. Br. at 17-20. The judge explicitly declined to reach whether the Secretary's interpretation was entitled to deference but, rather, construed the standard in accordance with its plain language. 17 FMSHRC at 760. In any event, we find no error in the

judge's conclusion that the question of the relative costs and gains of enforcing the standard was beyond his authority and more appropriately addressed to MSHA's Assistant Secretary. *Id.* at 762-63. The Mine Act confers enforcement authority upon the Secretary, rather than upon the Commission. *Mechanicsville Concrete, Inc.*, 18 FMSHRC 877, 879 (June 1996), *citing Thunder Basin Coal Co. v. Reich*, 510 U.S. \_\_\_, 127 L. Ed. 2d 29, 36, 40 (1994).

### III.

#### Conclusion

For the foregoing reasons, we affirm the judge's determination that Western Fuels violated section 75.516-2(c).

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner